DOCTRINES OF PRIVATE INTERNATIONAL LAW IN ENGLAND AND AMERICA CONTRASTED WITH THOSE OF CONTINENTAL EUROPE.[1]

The conditions of modern life have caused an immense increase in the number and complexity of the problems resulting from conflicts of law and jurisdiction. While it is not essential nor perhaps even desirable that the laws of all jurisdictions should tend toward uniformity throughout, yet the *system* of law applicable to a given course of conduct, or legal relationship, should be the same no matter in what *forum* a judgment concerning it, is eventually pronounced. The divergencies formerly existing on the Continent have been appreciably diminished during the past two decades by the Hague Conventions on Private International Law, while the line of cleavage has thus become more marked between the Anglo-American and Continental spheres of law. This results largely, though not entirely, from a divergence of theoretical principle. Comity is to a great extent still the basis for the application of foreign law in England and America; not, however, in European countries. The writer is thoroughly convinced that the principle is wrong and believes that a proper appreciation of its historical development will eventually lead to its complete abandonment.

I.

On the Continent of Europe, the principles of Private International Law trace their origin to early beginnings; in England and America, they are of comparatively recent origin. Teutonic conceptions of the personal or racial application of law led to a neglect of territorial limitations in the period following the dissolution of the Roman Empire. Trade was not extensive and personal property rights were determined by racial adherence. In the eleventh and twelfth centuries, however, an important commerce sprang into existence between the communities of Italy, controlled not merely by the Roman as the common law, but also by municipal statutes enacted by their own authority in the enjoyment of legislative autonomy.

[1] A paper read at Heidelberg, September 6th, 1911, before the Internationale Vereinigung für Vergleichende Rechtswissenschaft und Volkswirtschaftslehre.

It is not necessary to review the history of these statutory conflicts. I simply desire to emphasize that in the early middle ages, political conditions encouraged the growth of communities with large legislative powers but with a small extent of territory over which such legislation operated *ex proprio vigore.* This resulted in the application of foreign statutes in appropriate cases. As Westlake expresses it, the selection of law proceeded according to "principles of justice to be determined by reasoning."[2]

Almost at the same time, the rise of the feudal system in France and Germany was accomplishing the establishment of territorial sovereignty in the place of what Sir Henry Maine called "tribe-sovereignty."[3] The multiplication of fiefs, however, and the lack of strong central control created the need for a modification of the strictly territorial application of law, and thus the doctrines established by the commercial communities of Italy attained broader acceptance.

We may say that there were two competing theories in Central Europe; one sought to apply the law of the territory to every controversy determinable in a *forum* within it, the other to apply any system of law, even though external, if the demands of justice and the particular nature of the transaction so required.

England did not experience any part of this struggle. Firstly, her geographical isolation has ever caused a divergence of historical experience, while frequent warfare with her Continental neighbors resulted in a state of practical non-intercourse over many centuries. Continental possessions did not long remain in the hands of the crown nor were they ever conceived of as an integral part of the Kingdom. Secondly, the Norman conquest had been complete and absolute and had been followed by the establishment of a strong kingship and afterwards by the development of a parliament with real legislative authority. Though at first there was some need for adjustment between Anglo-Saxon and Norman customs and processes through royal ordinances, the two systems rapidly blended, as did also the two races themselves. Furthermore, the *"curia regis,"* as Brunner points out, early developed an "unexampled centralization of the administration of law."[4] All of these elements united to constitute a uniform system of law, powerfully territorial and exclusive, without

[2]Private International Law (4th ed.) 15.

[3]Ancient Law (1st Amer. ed.) 100.

[4]Brunner-Hastie, Sources of the Law of England (1888) 12-13.

the slightest demand for that finesse of logic required by jurists in France, Germany, Italy and the Netherlands in solving the conflicts of their multitudinous statutes and customs.

Of course, conflicts must have occurred even in England. We know that they did occur, but so infrequently that they were disregarded in the ruthless application of the territorial principle. A smile is evoked at the present day as we read in the ancient Year Books of a case decided in 1308 wherein a writ of debt was brought upon a document drawn and executed at Berwick in Scotland; and "because it was made at Berwick, where this Court has not cognizance, it was awarded that John took nothing by his writ, etc."[5]

Comity.

It was not until after the English Revolution, at the end of the seventeenth century, that we find any extensive mercantile intercourse with the Continent. The Netherlands were then enjoying a commercial prestige which stimulated the science and practice of jurisprudence in all its branches. Grotius, Rodenberg, the two Voets, Stockmans and Huber were known across the Channel. Close political relations with the Low Countries had been established, at least for a time. British, especially Scottish advocates attended at Dutch universities. As the admiralty and eccleciastical courts, untrammeled by the narrower rules of the common law, began to look abroad for precedents, which they failed to find at home, the doctrines of the Dutch School were found especially adaptable to the jurisprudence of England. For, in the absence of historic tradition, the application of foreign law seemed in derogation of the sovereignty of the local state; an objection which was eliminated by express reliance upon the *comitas gentium.*[6]

The theory of comity originally belonged entirely within the law of nations. It is interesting to note that in the earliest reported case wherein foreign law was applied, the validity of a marriage contracted abroad by English subjects was determined by the *lex loci celebrationis* because that was supposed to be demanded by the law of nations as part of the municipal law of the land.[7] Later the doctrine of comity was fully accepted by

[5]Y. B. 2 Ed. II (1 Selden Soc. Pub. 111).

[6]This idea entered largely into the decision of the earliest causes in America. "The comity thus extended to other nations is no impeachment of sovereignty." Bank of Augusta *v.* Earle (1839) 13 Pet. 519, 589.

[7]Scrimshire *v.* Scrimshire (1752) 2 Hagg. Cons. 395, 407.

Story. The first edition of his work upon Conflict of Laws appeared in 1834 and exerted an enormous influence not only upon the future development of its subject in the decisions of the Federal Supreme Court, of which he was a member, and in the Courts of the several States, but in England as well. Though reviewing the writings of a vast number of Continental writers both prior and subsequent to those of the Dutch School, his opinions concurred in the main with those of Huber. Indeed, Lainé styles them a mere paraphrase.[8] This is not quite exact as Story did acknowledge the *moral* obligation to apply the correct system of law.[9] He completely ignores the fact, however, that the local state does not resign any of its sovereign prerogatives, even voluntarily, in applying foreign law in a proper case, because the local system *embraces* also the application of the foreign system to an issue properly controlled by it.

Later writers, Wharton in America, Westlake in England, have drawn away from the early error. The former says:

"For when a foreign law binds a particular case, then it becomes part of our common law, and the parties are entitled of right to have it applied."[10]

The latter suggests the term "justice" for "comity."[11] Indeed the so-called "comity" doctrine has lost much of its original import with the passing of the years. It is declared not to be the comity of the court, but of the nation and the courts have given it a fixity in application which it originally lacked.[12] On the other hand, the great conservatism of English jurisprudence and the rule of *stare decisis* prevents complete escape from it.

As late as 1895 the United States Supreme Court (four out of nine justices dissenting) introduced the condition of reciprocity as a prerequisite to the execution of foreign judgments (though no legislation so requires) because the court deemed it "unwarrantable to assume that the *comity* of the United States requires anything more."[13] If I correctly read the English decisions[14]

[8] 23 Journal de Droit International 486.

[9] Conflict of Laws (1834) §§ 33-36.

[10] Conflict of Laws (3rd ed.) § 1½.

[11] Letter of Mr. Westlake, cited in 3 Lawrence, Commentaire sur Wheaton 58.

[12] See Wharton, Conflict of Laws (3rd ed.) 8 n. and cases there cited.

[13] Hilton *v.* Guyot (1895) 159 U. S. 113, 228; italics inserted by the present writer.

[14] Feyerick *v.* Hubbard (1902) 71 L. J. K. B. Div. 509 and cases therein cited; Messina *v.* Petrococchino (1872) 41 L. J. P. C. (N. S.) 27.

and those of the courts of the separate States,[15] no such condition is demanded for the execution of foreign money judgments, assuming that the foreign court had jurisdiction. In this, with the exception I have mentioned, the courts of the Anglo-American sphere, even though by the doctrine of comity, have arrived at a more liberal standard than exists on the Continent (excepting in Italy).

In England too, the "old woman's fable" as Lorimer pronounced it[16] reappears again and again. In a compendium published but two years ago under authority of the Lord High Chancellor, the application of foreign law, even in appropriate circumstances, is declared to be *ex gratia*![17]

The comity of nations, a political concept, thus continues to be applied by the judicial department of government to purely private controversies, devoid of all political significance. Under the conditions of international life in the twentieth century, when moral obligation has almost completely superseded comity in the law of nations, where it originated, this result is nothing short of bizarre.

II.

Within the limits of the present paper it will be possible to contrast the doctrines of the two spheres only upon certain selected topics. The discussion will be limited to those questions where an approach at uniformity may be discovered *within* each sphere. Thus, conflicts within the law of obligations are intentionally omitted, as the divergence within the Anglo-American sphere itself is equally as great as between its own jurisdictions and those of the Continent.[18]

Marriage.

By the Hague Convention relating to marriage, effective between many of the countries of the Continent, a marriage solemnized in accordance with the law of the place of celebration is a valid marriage everywhere as regards its form, saving the exception in favor of those countries which require for their nationals

[15] Wharton, Conflict of Laws (3rd ed.) § 653.

[16] 1 Lorimer, Law of Nations 357.

[17] 6 Halsbury, Laws of England (1909) 81.

[18] See, for example, an article by J. H. Beale in 23 Harv. L. R. 1. 79. 194, 260, upon the various systems adopted for the governing law of contracts.

a marriage celebration according to their own law.[19] The rule of law, therefore (exclusive of the exception), is practically that of the Anglo-American sphere so far as the *formalities* of the celebration are concerned. The point of difference lies in the determination of the *capacity* of the parties to enter into the relation. Upon this point, the law of the United States is now conceded to be different from that of England, for American courts refer questions of capacity as well as questions of form to the *lex loci,* with the single exception of marriages performed in countries where the institution itself is of a radically different nature.[20]

In England, the early state of the law would seem to have been modified to the extent that the personal law now determines the *restrictions* upon capacity, so that, in effect, both the law of the place of celebration, as well as the personal law of the parties must be satisfied, at least where the parties to the marriage are English.[21]

The result of this review shows a closer approach between English and Continental law upon this subject than under the earlier English decisions,[22] still followed in the United States. The mother country is in this, as in many other branches of law, rather more progressive than its offspring. The tendency to recognize a personal capacity or incapacity which shall accompany the person everywhere, in questions of personal and family relations, is in harmony with modern practice.[23]

It is interesting to observe that even in the United States a modification of the strictly territorial view maintained upon this subject has been proposed, though under a somewhat different label. The commissioners on Uniform State Legislation, in their draft bill concerning foreign marriages, propose that a marriage

[19]Hague Convention on Divorce (1902) Art. 5, Foreign Relations of the U. S. (1904) 527.

[20]Wharton, Conflict of Laws (3rd ed.) 356-357. See Earle *v.* Earle (1910) 126 N. Y. Supp. 317.

[21]3 Burge, Colonial and Foreign Laws (new ed. 1910 by Renton & Phillimore) 224.

[22]See, however, the opinion of Lord Brougham in Warrender *v.* Warrender (1835) 2 Cl. & F. 488, 531, where the later rule is foreshadowed *arguendo.* It is also interesting in that he says that in determining the validity of foreign marriages, "the Courts of the country where the question arises, resort to the law of the country where the contract was made, not *ex comitate,* but *ex debito justitiæ.*" *Ibid.* 530.

[23]In the recent case of Ogden *v.* Ogden (1908) Prob. 46, 77 L. J. Prob. 34, Sir Gorell Barnes recognizes that English courts have in later years become less unwilling to refer to the *lex domicilii.*

entered into by any citizen of a State in order to evade its own laws shall be invalid. As State citizenship is determined by domicile under the Federal Constitution, the natural construction of such an Act would invalidate a marriage entered into in another State, or in a foreign country, where the restrictions prevailing in the person's home State were violated, unless he had acquired a *bona fide* domicile.[24]

Divorce.

There is probably no legal question of a private international nature presenting so much difficulty as to determine the competent tribunal for a divorce which shall be everywhere recognized. The problem is twofold: (A) what jurisdictional requisites shall the local state demand before granting a divorce to parties who apply to its courts; (B) what effect shall be given by the local state to a decree of divorce granted by a foreign state.

A. The essential difference between the ruling principle in England and America and that of the Continent on the first question is that, on the Continent, legislation in most countries has established national as well as domiciliary *fora,* whereas in England and America, nationality is never the sole basis of jurisdiction; on the other hand, jurisdiction is sometimes assumed, even in the absence of domicile, when other elements are present, *e. g.,* if the marriage took place within the jurisdiction, or if both parties were domiciled there at the time when the ground for the divorce occurred.[25]

The real difficulty arises where the parties to the marriage are no longer cohabiting and are residing in fact in different jurisdictions. Ordinarily, the nationality of the wife will not be affected even by long separation. Where the standard of jurisdiction is nationality, there will be little difficulty. But where competence is determined by domicile, local legislation varies greatly in determining whether the parties can, in law, ever possess different domiciles until the marriage has actually been dissolved and, if so, upon what conditions.

[24]See 4 COLUMBIA LAW REVIEW 243, 246. Under the present state of the authorities a marriage celebrated abroad in *fraudem legis* is nevertheless recognized as valid. See the recent case of Earle *v.* Earle (1910) 126 N. Y. Supp. 317, 320.

[25]New York Code of Civil Procedure § 1756. A similar rule once prevailed in England. Niboyet *v.* Niboyet (1878) 4 L. R. P. D. 1. The courts have since returned to the domicile as "the only true test of jurisdiction." Le Mesurier *v.* Le Mesurier (1895) L. R. A. C. 517.

B. This brings us to the second phase. Local courts may grant divorce under their local legislation, although having actual jurisdiction over only one of the parties. But when the divorce is brought up for consideration in the court of another jurisdiction, as for instance in that having actual control of the other party, the divorce is subjected to a test of validity upon the basis of original jurisdiction. Clearly, in order that there shall be an international *effect* given to divorce, there must also be an international *test* for assuming jurisdiction.

On the Continent, where the parties have not the same domicile according to their national law, the moving party must resort to the jurisdiction of the defendant,[26] or in case of desertion and a change of domicile since the ground for divorce arose,—to the last common domicile.

Within the Anglo-American sphere itself, there is no uniformity of doctrine as to the right of the wife to acquire a separate domicile, or on the co-related question of the right of the husband to arbitrarily change the domicile without consulting the wife. The legislation of the American States is inharmonious. English courts have developed a doctrine independent of legislation.[27]

Without rehearsing the state of the law in detail, it is sufficient to say that whether by legislation or by judicial determination, the old rule that the domicile of the wife always follows that of the husband has broken down. Courts often speak of this as though it were done by way of legal fiction by presuming that both parties were domiciled within the jurisdiction, where, but for the conduct of the guilty party, they would have been. I confess an objection to all legal fictions, but especially to this one because unnecessary. In view of the changed condition of women in modern times, the results reached may be viewed legally with equanimity without resorting to fictions. The Hague Conventions seem to have dispensed with them, and doubtless new legislation in the Anglo-American sphere will arrive in time at the same result.

This departure from the old ideas would seem to necessitate a further alteration of doctrine, in that, internationally considered, jurisdiction over one of the parties should be sufficient,

[26]Hague Convention on Divorce (1902) Art. 5, Foreign Relations of the U. S. (1904) 529.

[27]Dolphin *v.* Robins (1859) 7 H. L. C. 389; Le Mesurier *v.* Le Mesurier (1895) L. R. A. C. 517.

instead of over both, as heretofore. In the United States, where conflicts upon this question are frequent, the highest court, by a bare majority of five out of nine judges, has refused to give extraterritorial effect to a divorce obtained in a State other than that of the last common domicile, where only one of the parties had a *bona fide* domicile and the other party had not been cited within the jurisdiction.[28]

Although the case is one of constitutional interpretation under the "full faith and credit" clause of the United States Constitution, it raises a question of sovereignty as to the power of one State to terminate the marriage relation where one of the parties is *bona fide* domiciled within that jurisdiction.

If the marriage status no longer exists as to one of the parties, it must, of necessity, be dissolved as to the other. As was said by Mr. Justice Brown in his dissenting opinion:

"It is of the very essence of proceedings *in rem* that the decree of a court with respect to the *res*, whether it be a vessel, a tract of land or the marriage relation, is entitled to be respected in every other State or country."[29]

The cosmopolitan character of life under modern conditions would seem to demand a logical adherence to this principle. Without it, the development of an international community of interest in matters of private legal justice would be practically impossible. The trend of Private International Law on the Continent is in this direction. It will be noted that the Hague Convention on Divorce does not create *fora,* but recognizes the *competency* of *certain fora* already existing.[30] Anglo-American policy, however, has not thus far sought the establishment of rules of competency in the international sense. No legislation or treaty of which I am aware, in Great Britain or the United States, has laid down the requisites which will be demanded in a foreign decree of divorce, in order that it be given extraterritorial effect. Such rules must be arrived at by examining the whole series of judicial determinations within a given jurisdiction. Accordingly, an un-

[28]In Haddock *v.* Haddock (1906) 201 U. S. 562, 627-628, Mr. Justice Brown says (dissenting together with Harlan, Brewer and Holmes, JJ.): "I regret that the court in this case has taken what seems to me a step backward in American jurisprudence, and has virtually returned to the old doctrine of comity, which it was the very object of the full faith and credit clause of the Constitution to supersede."

[29]Opinion of Brown, J., 201 U. S. 562, 616.

[30]Hague Convention on Divorce (1902) Arts. 5 and 7, Foreign Relations of the U. S. (1904) 529-530.

fortunate discord has resulted, not only as between the jurisdictions themselves, but even in the judicial decisions within a single jurisdiction.

Some international standard of competence would indeed seem to be most desirable. Accordingly, at the meeting of the International Law Association at London, in August, 1910, the writer proposed the following solution:

"A divorce granted by the Court of a state in which either of the parties has a *bona fide* domicile according to international, not merely local, standards, should be recognized as valid in every other state, provided actual notice of the proceedings has been communicated to the other party, and the ground upon which such divorce has been granted is one recognized by the personal law of both of the parties."[31]

In proposing this, the writer had in mind not only harmony within the Anglo-American sphere, but also the possibility of arriving at some common ground of agreement with our friends on the Continent. Thus, while making domicile, in the international sense, authoritative upon the question of the *forum,* the grounds upon which the divorce may be granted must be recognized by the personal law of both of the parties and that personal law may upon occasion be determined by domicile, or by nationality, according to the particular system which determines the personal law in the place of application.

Procedure.

Both the Continental and Anglo-American spheres recognize the rule, founded upon necessity, that the procedure to be adopted in a litigation, even though carried on between alien or non-resident litigants, must be that recognized at the *forum.* But there is a wide difference of opinion as to what properly constitutes procedure.

It is well known, for example, that the Anglo-American sphere regards the Statute of Limitations as a matter affecting remedy and, accordingly, to be governed by the *lex fori,* whereas on the Continent, the time during which a cause of action may be validly sued upon is considered as inhering in the cause of action itself and is determined by the system of law under which it arose. Logically it would seem that an element inhering in the cause of action itself and part of its essential nature, was out-

[31]Report of the 26th Conference (1910) 438.

side of strictly remedial law. A right without a remedy is a right only in name. Historically, the English rule can be traced to J. Voet, who was deemed by Story to have reasoned upon this question "with singular felicity."

It is interesting to observe the variation placed upon the old English rule by some American legislators in providing that where a cause of action arises outside of the State, the remedy will be limited to the time provided by the laws of the State or country where the cause of action arose, except where it accrued in favor of a resident of the State.[32] This, in effect, adopts the Continental rule where the law of the cause of action gives the shorter period of limitation. Though not displaying very great legislative liberality, it indicates that to-day at any rate, the old English principle is no longer retained because of any singularly felicitous reasoning on the part of the Dutch jurists who originated it.

On the other hand, Continental practice seems to go to extremes in identifying the cause of action with such questions as the burden and mode of proof which, under decisions or legislation in France, Germany and Italy, have been determined according to the law of the place where the cause of action arose, instead of by that of the *forum*.[33] These decisions startle an English or American advocate. If carried to their logical conclusions they would require the local judge to be versed in the manner of conducting trials prevailing in the foreign countries where the causes of action arose.

Another point of Continental procedure which is worthy of attention is the fact that the courts of last appeal, *e. g.*, in Germany and Switzerland, refuse to review determinations of the lower courts, where the error assigned is on the interpretation of foreign as distinguished from the local law. This result is reached by reason of the interpretation given to statutes giving such courts jurisdiction to review only where an imperial or federal law has been violated.[34] In other countries, *e. g.*, France and Belgium, the highest courts refuse to annul a judgment of lower courts for a violation of the *unwritten* rules of Private International Law.[35] It would certainly seem, as one Continental jurist has pointed

[32]New York Code of Civil Procedure § 390-a (Sept. 1, 1902).

[33]Meili, Das internationale Civilprozessrecht (1906) 402-414 and cases there cited. Italy, Disposizioni, Art. 10; Germany, R. G. vi, 413.

[34]Meili, Das internationale Civilprozessrecht (1906) 144 *et seq.*

[35]17 Journal de Droit International 406-414, 794-807; Cour de Cassation, Pasicrisie Belge (1909) Vol. 1, p. 25.

out, that when, for example, a German statute requires the application of a foreign law, the German law would indeed seem to be violated if the judge does not *properly* apply the foreign law.[36]

A more fortunate turn has been given to recent jurisprudence in the Anglo-American sphere, at least in the United States. The universal rule makes foreign law provable as facts are proved. Though recent decisions have not changed this rule, yet when, after such proof is given, the questions involved depend upon the construction and effect of a statute or judicial decision, it is held that "those questions are for the court, and not questions of fact at all."[37] Accordingly, the highest courts will examine into the construction given to the foreign law by inferior courts and reverse for error.[38]

All jurisdictions are very far, however, from reaching the ideal of Meili according to which the judge should be permitted to apply the foreign law *ex officio*.[39]

Conclusion.

The reason officially assigned by Great Britain for its failure to send delegates to the Hague Conferences was the "peculiar" nature of English law. Yet the *divergence* of legal systems is the very *raison d'être* of those Conferences. Without it, there would be no conflicts of law. Nor can it be said that there is any settled policy in England or America against varying local law by treaty in the manner now general in Continental Europe and Latin America. The Foreign Law Ascertainment Act makes provision for the passing of treaties for the proof of foreign law by commission addressed to the highest courts of the contracting states.[40] Both Great Britain and the United States have entered into treaties governing the private and property rights of aliens within their territorial jurisdiction. The power to hold land, denied to aliens by the statutes of many States, is guaranteed by treaties

[36]Meili, Die Moderne Fortbildung des internationalen Privatrechts (1909) II.

[37]Bank of China *v.* Morse (1901) 168 N. Y. 458, 470.

[38]*Ibid.* The Massachusetts doctrine is in accord where the evidence is a single statute or decision; not, however, where the law is to be determined from numerous decisions more or less conflicting. Wylie *v.* Cotter (1898) 170 Mass. 356, 357.

[39]Das internationale Civilprozessrecht (1906) 139.

[40]24 & 25 Vict. Chap. XI.

constituting the supreme law of the land. Treaties have also been passed governing the administration of the estates of deceased aliens.[41]

There is a feeling in some quarters that the treaty-making power of the United States should not impose upon the various States rules of strictly private law in fields wherein, under the Constitution, they have the right of sovereign legislation. It must be admitted that the delegated nature of the general government has made it loth to enlarge too greatly upon this function. Recently, however, it has been pointed out that Congress, under the judicial clause of the Constitution (Article III) has the power to legislate even on questions otherwise reserved to the States, so far as affects all controversies in the Federal Courts between citizens of different States and between citizens and aliens.[42] Though Congress has made sparing use of this power, it may eventually open the way to treaty-making covering a wider range of subjects, to which, if necessary, legislative effect could be given by virtue of the *exequatur* of an Act of Congress.

Public opinion, now become articulate on many questions of legal reform in Great Britain and the United States, will probably also be the final arbiter in favor of, or against, joining treaty unions such as those established by the Hague Conventions on Private International Law.[43] The present is undoubtedly an introductory period. The success of an uniform law operating internationally upon bills of exchange would doubtless lead the way to a further approach between the two spheres. The so-called international unions, the number of which has rapidly increased in recent years and to some of which both Great Britain and the United States have given official sanction, also tend toward this result.

In an age when physical barriers between nations have been broken down by ever more efficient means of transportation and inter-communication and when guarantees for permanent friend-

[41]For the British statute, see 24 & 25 Vict. Chap. CXXI.

[42]See article by F. J. Goodnow on the Legislative Power of Congress, 25 Political Science Quarterly (December 1910) 577.

[43]"A real obstacle, it appears to me, to the success of procedure by international convention in such matters is that, if the scheme involves a change in municipal law and legislative sanction, it is not everywhere easy, in these busy times, to get a legislative authority, in the press of public affairs, to give sufficient time and attention to a matter which is devoid of political or party interest and is too technical to create any enthusiasm in the general public." Lord Justice Kennedy before the Universal Congress of Lawyers and Jurists, St. Louis, 1904, Official Report p. 206.

ship and peace are daily multiplying, a closer bond of interest in the administration of private justice, though long delayed, would seem to be inevitable.[44]

ARTHUR K. KUHN.

NEW YORK.

---

[44]The Heidelberg Conference (1911) of the Internationale Vereinigung, sitting as a Committee of the Whole, unanimously adopted the following *voeux*, on the writer's motion:

1. that the Anglo-American and Continental European systems of Private International Law should, through mutual concessions, aim at a closer approach toward uniformity;

2. that an international commission should be constituted for the purpose of studying and reporting upon the best method of accomplishing this;

3. that Great Britain and the United States should send delegates to future Conferences upon Private International Law to be held at The Hague, for the purpose of reporting the results of the Conferences to their respective governments.